

Appendix B to RFP# 99-63

Pending Approval by the Office of the Attorney General

EDIMS IMAGING SYSTEM CONTRACT

(D R A F T Contract # 99-64)

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CONTRACT NUMBER 99 - 64

PARTIES

This Contract is entered into by and between the state of Washington, Department of Retirement Systems (DRS), an agency of Washington State government (hereinafter “DRS” or “Purchaser”) located at 6835 Capitol Boulevard, Tumwater, Washington; P.O. Box 48380, Olympia, Washington, 98504-8380, and **[Vendor’s Name]**, a *[corporation/sole proprietor or other business form]* with TIN *[FEIN # or SSN in lieu]* licensed to conduct business in the state of Washington under UBI number *[UBI number]* (hereinafter “Vendor”), located at *[address]* for the purpose of converting (backfile) paper documents to electronic images

RECITALS

WHEREAS, DRS issued a Request for Proposals, hereinafter “RFP” dated *[Date]*, (Exhibit A) for the purpose of obtaining a system of hardware and software for the imaging, storage and retrieval of documents, in accordance with its authority under Chapter 43.105 RCW; and,

WHEREAS, the *[Vendor’s Name]* submitted a timely proposal to DRS’ RFP (Exhibit B); and,

WHEREAS, DRS evaluated all proposals properly submitted in response to the above-referenced RFP and has identified *[Vendor’s Name]* as the apparently successful Vendor; and,

WHEREAS, DRS has determined that entering into a Contract with *[Vendor’s Name]* will meet the needs of DRS and will be in DRS’ best interest;

NOW THEREFORE, DRS awards to *[Vendor’s Name]* this Contract which shall govern Vendor’s furnishing to DRS the imaging hardware, software and related services indicated in Exhibits A and B, which are incorporated herein by this reference.

IN CONSIDERATION of the mutual promises hereinafter set forth, the parties agree as follows:

DEFINITIONS

1. Definition of Terms

Terms used throughout this Contract shall have the meanings set forth below.

“**Acceptance**” shall mean a written notice from DRS to the Vendor that the Equipment and Software has passed its Acceptance Testing.

“**Acceptance Date**” shall mean the date upon which DRS accepts the Equipment and Software as provided in the sections titled Standard of Performance and Acceptance for Equipment, and Software Standard of Performance and Acceptance Testing.

“**Acceptance Testing**” shall mean the standards to be met by the Equipment and Software prior to Acceptance by DRS, as set forth in the sections titled Standard of Performance and Acceptance for Equipment and Software Standard of Performance and Acceptance Testing.

“**Business Days and Hours**” shall mean Monday through Friday, 6:00 a.m. to 6:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“**Contract**” shall mean this document, all schedules, exhibits, and amendments hereto.

“**Department of Retirement Systems**” shall mean the same as “Purchaser.”

“**Equipment**” shall mean the scanner, jukebox and any other Equipment provided by the Vendor for his staff’s use in providing the services as set forth in Schedule A.. “**Equipment Failure**” shall mean a malfunction in the Equipment, excluding external factors, which prevents the accomplishment of the Equipment’s intended function(s).

“**Exhibit A**” shall mean the Request for Proposal issued by DRS dated *[Date]*.

“**Exhibit B**” shall mean the Vendor’s proposal dated *[Date]*.

“**Order Document**” shall mean any DRS document and attachments thereto specifying the Equipment to be purchased from the Vendor under this Contract.

“**Purchaser**” shall mean the Department of Retirement Systems, any division, section, office, unit or other entity of DRS or any of the officers or other officials lawfully representing DRS services. “**DRS Contract Administrator**” shall mean that person designated by DRS to administer this Contract on its behalf as further defined in the section titled Purchaser Contract Administrator.

“**Purchaser Contracting Officer**” shall mean DRS’ Deputy Director, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Contracting Officer acting within the limits of his/her authority.

“**RFP**” shall mean the Request for Proposal used as a solicitation document in this procurement, as well as all amendments and modifications thereto.

“**Related Services/Services**” shall mean those services provided under this Contract and includes such things as training, etc.

“**Specifications**” shall mean the technical and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor’s Proposal, Exhibit B, collectively.

“**Standard of Performance**” shall mean the criteria which must be met by Vendor and Vendor’s staff on an on-going basis during the course of providing the services listed on Schedule A.

“**Subcontractor**” shall mean one not in the employment of the Vendor, who is performing all or part of the services under this Contract under a separate contract with the Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“**Vendor**” shall mean *[Vendor’s Name]*, its employees and agents. “Vendor” also includes any firm, provider, organization, individual, or other entity performing services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“**Vendor’s Account Manager**” shall mean a representative of the Vendor who is assigned as the primary contact person whom the DRS Contract Administrator shall work with for the duration of this Contract unless replaced, with advance DRS approval, by another representative.

CONTRACT TERM

2. Contract Term

- 2.1. Initial Contract Term - The initial term of this Contract shall be one (1) year, commencing upon the date of its execution by both parties. The date of execution shall be the date of the signature, latest in time.

3. Survivorship

- 3.1. All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that, by their sense and context, are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Disputes, Limitation of Liability, Patent and Copyright Indemnification, and Protection of DRS' Confidential Information shall survive the termination of this Contract.

PROJECT SCOPE

4. General

- 4.1. Vendor agrees to sell and DRS agrees to purchase the Services described in Schedule A (Authorized Services and Price List).
- 4.2. Changes in the scope of the Project which add, delete or alter Deliverables described in Schedule B (Statement of Work and Deliverables) shall be mutually agreed upon by both parties and approved using the Change Order process as specified in this Agreement.

5. Vendor Role and Subcontractors

- 5.1. Vendor shall be responsible for performance of its obligations as described herein, including serving for the Project as the primary Vendor for the various components, provided by the Vendor and its Subcontractors, if any. Vendor may, with prior written permission from the Department, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. Any such approval may be rescinded for reasonable cause. The Department reserves the right to reject or refuse admission to any Vendor or Subcontractor personnel whose workmanship, in the reasonable judgment of the Department, is deemed to be substandard. Vendor's use of any Subcontractor shall not cause the loss of any warranty from Vendor or any Equipment or component manufacturer.
- 5.2. Vendor shall remain solely responsible and liable to the Department for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to DRS for any breach in the performance of Vendor's duties. Vendor further agrees to indemnify, defend and hold harmless DRS for acts or omissions of its Subcontractor as described in Section 73 of the Contract.
- 5.3. Vendor shall require any Subcontractor to provide DRS and State and federal auditors with access to a Subcontractor's records to the extent necessary to conduct audits. In the event that DRS consents to subcontracting, Vendor shall include in all subcontracts the following provision: "This Agreement is a

subcontract under the terms of a prime contract with the State of Washington, Department of Retirement Systems.”

- 5.4. In the event DRS consents to subcontracting, all appropriate provisions of this Contract and any amendments thereto shall extend to and be binding upon and inure to the benefit of the successors, assignees, or delegates of the respective parties.

6. Services

6.1. Time is of the Essence

In performing its obligations under this Contract, Vendor understands and agrees that time is of the essence in connection with Vendor’s performance under this contract.

6.2. Standards of Work

Vendor represents and warrants that it shall perform all Services required under this Contract in a professional manner, and in accordance with the Specifications set forth in the RFP attached as Exhibit A. Vendor shall re-perform any Services not in compliance with this warranty brought to its attention by DRS within a reasonable time after the applicable Services are performed.

6.3. Necessary Resources

- 6.3.1. Except as specifically provided in this Section, Vendor shall provide the personnel and all other materials, equipment and resources necessary for the performance of its Services. DRS shall provide workspace at its facility for all Vendor’s staff including reasonable office furniture, supplies, local telephone service, network access, and copying as approved by DRS and as necessary for Vendor to perform the Services. Vendor must provide all necessary equipment not mentioned in this section.
- 6.3.2. The Vendor shall ensure that its Project staff are on site at the DRS facility in Olympia during the periods specified in the detailed Statement of Work and Deliverables. The Vendor’s Project Manager shall be on-site as mutually determined by the Contract Manager and the Vendor’s Project Manager to ensure an acceptable level of Project Planning, coordination, and management of the Project.

6.4. Reference Check on Vendor Staff and Subcontractors

Due to the confidential nature of the information and materials which will be accessible to Vendor, DRS may conduct a reference check on Vendor staff or Subcontractors to be used to provide the Services. DRS reserves the right in its sole discretion to reject for reasonable cause any proposed Vendor staff or Subcontractor as a result of information produced by such reference checks.

PRICING, INVOICE and PAYMENT

7. Pricing

- 7.1. The Vendor agrees to provide Services at the costs, rates, and fees set forth below and in the Authorized Product and Price List attached as Schedule A, and as specified in the Vendor's proposal dated _____, attached as Exhibit B to this Contract. No other costs, rates, or fees shall be payable to the Vendor.
- 7.2. Such costs, rates, and fees may not be increased during the term of this Contract, except as explicitly authorized by terms elsewhere in this contract.
- 7.3. If the Vendor reduces its list prices for any of the Services during the term of this Contract, DRS shall have the immediate benefit of such lower prices and rates for new purchases. Vendor shall send notice to the DRS Contract Administrator with the reduced list prices within fifteen (15) business days of the reduction taking effect, and Vendor shall send updated price lists to the DRS quarterly.
- 7.4. At least 120 calendar days before the end of the then current term of this Contract, the Vendor may propose purchase price and maintenance and support (service) rate increases by written notice to the DRS Contract Administrator. The proposed fixed cost price and/or rate increases shall not be inconsistent with the other terms of this Contract or the RFP regarding future rate increases. Price adjustments will be taken into consideration by the DRS Contract Administrator when determining whether to extend this Contract.

8. Advance Payment Prohibited

No advance payment shall be made for the Services furnished by Vendor pursuant to this Contract.

9. Taxes

DRS will pay sales and use taxes imposed on any equipment acquired hereunder. The Vendor will pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which DRS does not hold title. Vendor will pay all applicable under Vendor's federal and state identification number(s). DRS, as an agency of the Washington State Government, is exempt from property tax.

10. Invoice and Payment

- 10.1. The Vendor will submit properly itemized invoices and/or vouchers to DRS. All invoices submitted must meet with the approval of the Contract Manager or his or her designee prior to payment. Vendor shall not submit invoices for Deliverables, or their associates' Services (sub-contractors or third-party providers) until receipt of notice from DRS that Acceptance has occurred. Invoices must reference this Agreement and shall provide and itemize, as applicable:
 - a) Contract number 99 – 64
 - b) Professional services
 - c) Net invoice price for each item;
 - d) Applicable taxes;
 - e) Shipping costs;
 - f) Other applicable charges;
 - g) Total invoice price; and
 - h) Payment terms including any available prompt payment discounts.

- 10.2. Such payments shall be due and payable within thirty (30) calendar days after receipt and acceptance of such Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 10.3. Incorrect or incomplete invoices will be returned by DRS to the Vendor for correction and re-issuance.
- 10.4. This Contract number 99 – 64 must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. DRS shall not honor drafts, nor accept goods on a sight draft basis.
- 10.5. If DRS fails to make timely payment, Vendor may invoice DRS one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Equipment or Software or Delivery of related services, or receipt of Vendor's properly prepared invoice, whichever is later.

11. Withholding Payments

- 11.1. DRS shall have the right to withhold any and all payments due hereunder (including payments due for Deliverables for which Acceptance has been previously provided, but payment not yet made, and for Deliverables which have not been accepted) if Vendor fails to deliver any of the Deliverables or to provide Services which satisfy Vendor's obligations hereunder.
- 11.2. DRS may also withhold from any amounts due Vendor such sum as the Department determines to be necessary to protect DRS against potential loss or liability. DRS may withhold all or any such moneys due and payable to Vendor after notice is provided to the Vendor, without penalty, until such failure to perform is cured or otherwise adjudicated.
- 11.3. DRS will also withhold 10% of the Purchase Price, including any incentive funds, for each Deliverable. Upon Acceptance of the Final System, DRS shall pay the amount withheld for each previous Deliverable for which DRS has given its Acceptance in accordance with the terms of Section 20 below.
- 11.4. Nothing herein impairs the right of DRS to terminate this contract as set forth in the section titled "Contract Termination".

12. Overpayments to Vendor

Upon notice thereof, Vendor shall promptly refund to DRS the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.

PROJECT MANAGEMENT ADMINISTRATION

13. Project Plans

- 13.1. Statement of Work and Deliverables. Vendor shall revise the Project Statement of Work submitted in the Response, which is included in Exhibit B, with DRS' collaboration to reflect Project changes and/or additional detail since its initial submission. The revised Project Statement of Work and Deliverables submitted prior to the Effective Date includes all tasks expected of both the Vendor and DRS. The revised Project Statement of Work and Deliverables is hereby attached and incorporated into this agreement by reference.
- 13.2. Project Statement of Work Updates. Vendor shall update the Statement of Work and Deliverables regularly (no less than biweekly) and as otherwise necessary throughout the Project to accurately reflect the status of milestones and deliverables.
- 13.3. Activities, Tasks, Events and Services Are Subject to Agreement by DRS on Such Updates. Any changes or updates to the Statement of Work that affect the dates for any of the Deliverables must be agreed upon in writing by both parties.

14. Reports

All Reports shall be produced in formats approved by DRS and delivered in accordance with the timeframes set forth in the Project Statement of Work and Deliverables and the terms of this Contract.

15. Reporting Requirements

During the term of this Agreement, Vendor shall produce the Reports and the parties shall participate in the meetings described below.

- 15.1. Weekly Meetings or Conference Calls. Vendor's Project Manager or designee shall participate in weekly meetings or conference calls with the Contract Manager. These weekly meetings or conference calls shall follow an agenda jointly prepared by the Contract Manager and Vendor's Project Manager, but will also allow both Vendor and DRS to discuss other issues that may concern either party.
- 15.2. Weekly Status Reports. Brief written Status Reports shall be provided by Vendor which describe the previous week's activities and deliverables, including problems encountered and their disposition, results of tests, whether or not deadlines were met, and any problems that may have arisen and that need to be addressed before proceeding to the next activities. Vendor's proposed format and level of detail for the status Reports shall be subject to DRS' approval.
 - 15.2.1. Status Report and Meetings. Vendor's Project Manager, along with appropriate Vendor's representatives shall attend status meetings as requested by DRS with the Contract Administrator and selected DRS executives. In preparation for such meetings, Vendor shall submit a status Report which will be due in the Contract Administrator's office no later than two working days prior to any scheduled meeting during the term of the Contract. The narrative portion of the Report will address, at a minimum, the following:
 - 15.2.2. Overall status of the project in reference to the Project Statement of Work and Deliverables;
 - 15.2.3. Deliverable status;
 - 15.2.4. Problems and issues encountered and actual resolutions;
 - 15.2.5. Proposed changes to the Project Statement of Work and Deliverables.
- 15.3. Special Reports. As reasonably requested by DRS, Vendor's Project Manager shall assist the Contract Administrator in preparing special briefing Reports.

16. Vendor Project Manager

Vendor will assign to this Contract as Vendor's Project Manager an individual of a management level sufficient to assure timely responses from all Vendor personnel. Vendor agrees and represents that Vendor's Project Manager will be fully qualified to perform the tasks required of that position under this Contract. Vendor's Project Manager shall be responsible for acting as a liaison with the Contract Administrator and shall function as Vendor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. Vendor's Project Manager shall be able to make binding decisions pursuant to this Contract for Vendor. If Vendor's Project Manager is removed, replaced or terminated, or terminates his or her employment with the Vendor, Vendor will promptly provide notice to the Department, submit a resume and seek and obtain the Contract Administrator's written approval of the replacement Project Manager prior to Vendor's replacement of the prior Vendor's Project Manager.

17. Vendor Project Staff

- 17.1. A list of the Vendor's Project team, including names, roles and resumes of key Project participants, is to be included within Exhibit B. Vendor will also provide to DRS the specific job description for Vendor's key Project positions.

- 17.2. Staffing commitments made in Exhibit B shall not be changed without the prior written approval of DRS, subject to such staff's completely leaving Vendor and its affiliated organizations without DRS' approval for reasons outside Vendor's reasonable control, e.g. due to retirement, illness or leaving for a job at a new, unaffiliated company. Staffing will include the named key individuals at the levels of effort proposed. Vendor must receive DRS' prior written approval for any permanent or temporary changes to or deletions from Vendor's named management, supervisory, and professional personnel, subject to such staff's leaving Vendor and its affiliated organizations without the Department's approval for reasons outside the Vendor's reasonable control. DRS, at its sole discretion, may approve or reject any or all such changes to Vendor staffing. Failure of the Vendor to obtain DRS' prior written approval of Vendor's staffing changes may result in termination of contract.
- 17.3. During the term of this Contract, DRS reserves the right to approve or disapprove Vendor's and any Subcontractor's staff assigned in the Contract, to approve or disapprove any proposed changes in staff, or to require the removal or reassignment of any Vendor or Subcontractor staff found unacceptable by DRS.

18. DRS Contract Administrator

Vendor's point of contact in all matters of Project management will be the DRS Contract Administrator or her or his designee. In her or his Project management role, the DRS Contract Administrator will be responsible for supervision of all tasks identified in the RFP, the Proposal, and Project Statement of Work and Deliverables, including the following:

- 18.1. Coordinating the reporting, review and quality assurance process;
- 18.2. Facilitating the effective participation of State staff;
- 18.3. Resolving questions raised by Vendor requiring clarification of DRS requirements, policies, and procedures;
- 18.4. Administering and managing the Contract;
- 18.5. Monitoring the progress of all principal Project participants, including Vendor and other State entities;
- 18.6. Providing Acceptance for all Deliverables and approving payments; and
- 18.7. Facilitating the timely resolution of issues raised by principal Project participants.

19. Supplemental Contracts

DRS may undertake or award contracts for work related to the Contract, or any portion thereof. Vendor shall cooperate with such other vendors and DRS in all such cases. Vendor will ensure that all Subcontractors will abide by this provision.

DELIVERABLES

20. General

Vendor shall provide DRS with the Deliverables and sub-deliverables described in **Exhibit B, Schedule B** and this agreement. Vendor shall utilize the Vendor's expert knowledge, the Vendor's own Response for Proposal, and this Agreement as the basis of the Deliverables. Vendor shall retain backup copies in writing and on electronic media where appropriate of all Deliverables until 60 days after Acceptance and shall provide the Department on its request with a copy thereof until that time, at no additional cost. Vendor shall deliver all Deliverables to the Contract Manager at DRS' headquarters at 6835 Capitol Boulevard, Tumwater, Washington, 98501. Where applicable, such Deliverables shall be delivered in hard copy form in the number of copies designated by the Department and on electronic media and in formats designated by the Department.

- 20.1. Acceptance Procedures – General. DRS shall, at its sole discretion, determine whether each Deliverable and then the System as a whole meets the specified Acceptance criteria. DRS will not have accepted any Deliverable or the System until each meets the Acceptance criteria set forth in this Contract, including, but not limited to, Section 28 entitled “Standard of Performance and Acceptance for Equipment” and Section 35 entitled “Software Standard of Performance and Acceptance Testing”. DRS will notify the Vendor, in writing, after each submitted Deliverable has met the above-referenced standards of performance and the Specifications and receives the Department’s Acceptance.
 - 20.1.1. The starting dates of the training will be as agreed by the parties.
 - 20.1.2. The training fees, whether separately stated under the pricing sections of this Contract or included in the cost of the Equipment and/or Software, shall cover all costs of training. DRS shall not be responsible for any additional Vendor costs for training required pursuant to this section.
- 20.2. Vendor agrees to provide the Hardware, Software and Related Services described in the Statement of Work and Deliverables, including the Licensing Agreement and Hardware/Software Maintenance Agreements, attached as Schedule B to this contract for the provision of Backfile Conversion Services as described in DRS’ RFP and the Vendor’s proposal attached as Exhibits A and B to this contract.

CHANGE ORDERS

21. Changes Within the Scope

21.1. Changes Within the Scope

Either party may, at any time by a written Change Order, request a change within the scope of the Contract. Such changes may include without limitation modification of technical Specifications, procedures, Documentation, Services or Application Software.

21.2. Mandated Changes and Corrections

- 21.2.1. DRS may, at any time by a written Change Order, make changes to the System required in DRS’s judgment by new Federal or State law or regulation that require additional resources or an accelerated schedule. DRS will issue a Change Order to Vendor specifying the scope of the change and expected completion date. The Change Order shall be subjected to the same terms and conditions of the Contract unless otherwise specified in the Change Order and Agreed upon between both parties.

- 21.2.2. However, correction of any failures and full implementation of all systems capabilities in accordance with the Specifications, including those resulting from a Change Order, are the Vendor’s responsibility to provide without additional charge.

21.2.3. Response

Either party shall respond in writing to a Change Order request within ten working days of receipt. If DRS has initiated the change order, then the Vendor shall advise DRS of any cost and schedule impacts within 10 working days. When there is a cost impact, i.e., increase or decrease in Charges, Vendor shall advise the Department in writing of the increase or decrease involved, including a breakdown of the number of staff hours by level of personnel needed to effect this change within 10 working days.

21.3. Agreement

Vendor, DRS Contract Manager and DRS Contracting Officer shall negotiate in good faith and in a timely manner as to the price and the impact on the Schedule of any Change Orders. If the parties reach an agreement in writing, the terms hereof shall be modified accordingly.

21.4. Disagreement

If the parties are unable to reach an agreement in writing within ten working days of the Vendor's Response to a Change Order, DRS Contract Administrator and DRS Contracting Officer may make a determination of the revised price and Schedule, and the Vendor shall proceed with the work according to such price and schedule, subject to the Vendor's right to appeal the determination of the price and/or Schedule pursuant to Section 53. Nothing in this Section shall in any manner excuse Vendor from proceeding diligently with the Contract, as changed by the Change Order.

21.5. Termination

If Vendor fails or refuses to perform its Services pursuant to a Change Order, Vendor shall be in material breach of this Contract, and DRS shall have the right to terminate this Contract for such a breach.

21.6. Preparation of Change Orders

Vendor shall not charge DRS for time spent preparing Change Orders.

22. Changes Outside the Scope

Changes outside of the scope of this Contract will be effective only when mutually agreed upon by the parties and a written Amendment is executed by authorized representatives of each party.

23. VENDOR'S RESPONSIBILITIES

23.1. Equipment Title - Upon successful completion of Acceptance Testing and receipt of DRS' letter of Acceptance, the Vendor shall convey to DRS good title to Equipment purchased under this Contract as noted on Schedule A, excluding licensed software, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. Transfer of title to the Equipment does not include transfer of title to Vendor's Software. Purchased Services

23.2. Related Services shall be performed pursuant to the specifications set forth in DRS' solicitation document(s) for additional/related services and the terms and conditions of the agreement between DRS and vendor, which incorporate by reference terms and conditions of this Agreement. Future Statements of Work executed by DRS and Vendor for Purchased Services will designate the project or task objectives, scope of work to be performed, deliverables to be provided, Vendor's roles and responsibilities, DRS' roles and responsibilities, desired start and stop dates, primary work site, a list of necessary materials, the maximum cost for the Purchased Services, and any other special requirements.

23.2.1. Unless otherwise provided, data which originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by DRS. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

23.2.2. Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to DRS with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so: PROVIDED, that such license shall be limited to the extent which the Vendor has a right to grant such a license. The Vendor shall exert all reasonable effort to advise DRS, at the time of delivery of data furnished under this Contract, of all known or potential infringements of privacy or other intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. DRS shall receive prompt written notice of each notice or claim of copyright infringement received by the Vendor with respect to any data delivered under this Contract. DRS shall have the right to modify or remove any restrictive markings placed upon the data by the Vendor.

- 23.3. Vendor shall not use or in any manner disseminate such work product or program to any third party without the prior written permission of DRS. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or duplicate any programs or work products or any portion thereof, in any form, or make any disclosure with reference thereto to any third party.

24. Equipment and Software Delivery

- 24.1. The Vendor shall deliver any Equipment ordered pursuant to this Contract on or before March 15, 2000. Professional Services under the terms of this contract will be completed on or before June 30, 2001. For any exception to this Delivery Date, the Vendor must notify DRS 20 days prior to original delivery date and obtain prior approval in writing.
- 24.2. All Equipment deliveries made pursuant to this Contract must be complete. Unless the Vendor has obtained prior written approval from DRS, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip which identifies all items included with the shipment and DRS' Contract number. The Vendor's delivery receipt must be signed by DRS' Contract Manager for all deliveries made hereunder.
- 24.3. All deliveries of Equipment must be made at 6835 Capitol Boulevard, Tumwater, WA 98501 and must be prearranged with the DRS Contract Administrator.

25. Risk of Loss and Shipping

The Vendor shall ship all Equipment purchased pursuant to this Contract, freight prepaid, FOB DRS' destination. The method of shipment shall be consistent with the nature of the Equipment or Software and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Equipment ordered, hereunder which occurs prior to Acceptance, except loss or damage attributable to DRS' fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After Acceptance, the risk of loss or damage shall be borne by DRS, except loss or damage attributable to the Vendor's fault or negligence.

26. Vendor Equipment and Software Installation and Set-up

- 26.1. The Vendor shall install the Equipment and software ready for Acceptance Testing on or before the Installation Date of April 15, 2000. Failure to meet the Installation Date may subject the Vendor to damages and/or termination of this Contract and/or other damages available under law, unless acts or omissions of DRS cause such failure. See Section 56. Liquidated Damages. Should the Project Schedule change, causing a change in Installation Dates, the Vendor will be notified in writing of such changes by the DRS Project Manager.
- 26.2. After installing the Equipment, the Vendor shall provide DRS with documentation of a successful system audit, performed at DRS' installation site using Vendor's diagnostic routines, as approved by DRS, which demonstrates that the Equipment meets or exceeds the technical and other Equipment specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor's Proposal, Exhibit B, which collectively shall be called the "Specifications." Vendor shall certify to DRS in writing that the Equipment is ready for Acceptance Testing. If after reviewing such documentation DRS agrees that the Equipment is ready for Acceptance Testing, DRS shall begin Acceptance Testing, as set forth in section titled Standard of Performance and Acceptance for Equipment.
- 26.3. DRS shall prepare the environment to house the Equipment based upon written requirements provided by Vendor in Exhibit B, as modified in writing and agreed to by the parties. Vendor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to DRS apart from the costs presented in Vendor's Response. Any requirements for the environment not disclosed in Vendor's Response will be completed by Vendor at no additional cost to DRS.

27. Equipment Specifications/Configurations

- 27.1. Each item of Equipment, component, or feature thereof delivered hereunder will conform to the detailed specification of said item, as set forth in the Vendor's proposal, in all respects including, but not limited to, physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.

28. Standard of Performance and Acceptance for Conversion System

- 28.1. This section establishes a Standard of Performance which must be met before the Conversion System is accepted by DRS.
- 28.2. The Standard of Performance is defined as 100% effectiveness level of operation in conformance with the current published specifications and demonstrated capabilities, the RFP requirements, and Vendor's proposal for the initial period of Acceptance Testing, to be mutually defined by both Parties during Contract negotiations. DRS will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.
- 28.3. In the event the Conversion System does not meet the Standard of Performance during the initial period of Acceptance Testing, DRS may, at its discretion, continue Acceptance Testing on a day-to-day basis for an additional twenty (20) calendar days until the Standard of Performance is met. If the Conversion System still has not met the Standard of Performance DRS may, at its option: (1) declare the Vendor to be in breach and terminate this Contract; or, (2) demand replacement Equipment or Software from the Vendor at no additional cost to DRS; or, (3) continue the Acceptance Testing for an additional thirty (30) calendar days. The Vendor shall pay all costs related to the preparation and shipping for Equipment or Software returned pursuant to this section. DRS' option to declare the Vendor in breach and terminate this Contract shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed as determined solely by DRS.
- 28.4. Equipment shall not be Accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first DRS business day following the successful Acceptance Testing period, and shall be formalized in a letter of Acceptance from DRS to the Vendor.
- 28.5. Monthly Performance Monitoring - Throughout the initial and subsequent maintenance terms of this Contract, DRS shall monitor the effectiveness level of the Conversion System, on a monthly basis, to ensure the Equipment operates at the effectiveness level as established in this Standard of Performance and Acceptance of Equipment section. Failure of Vendor to provide the effectiveness level established in this section throughout the initial and subsequent maintenance terms of this Contract will require Vendor to take corrective action, as directed by DRS. Failure to take corrective action as directed by DRS shall constitute a breach of this agreement.
- 28.6. Maintenance Charges - Maintenance charges for the Conversion System shall be the exclusive responsibility of the Vendor.

29. Equipment Warranty

- 29.1. The Vendor warrants that any Equipment purchased under this Contract, when installed, shall be in good operating condition and shall conform to the Specifications and other materials provided to DRS as set forth in the section titled Vendor Commitments, Warranties and Representations, at the time of Acceptance by DRS and for a period of one (1) year commencing upon the first day after Acceptance. Vendor further warrants that the Equipment conforms to all mandatory requirements set forth in Exhibit A and all representations contained in the proposal Vendor submitted in response thereto.

- 29.2. Within two (2) business days of notification from DRS, Vendor shall adjust, repair or replace all Equipment that is defective or not performing in conformance with the Specifications. The Vendor shall assume all costs for replacing parts or units and their installation, including transportation and delivery fees, if any.
- 29.3. Vendor agrees that all warranty service it provides hereunder shall be performed by manufacturer trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has and will obtain and pass through to DRS any and all warranties obtained or available from the original Equipment manufacturer, including any replacement, upgraded, or additional Equipment warranties.
- 29.4. DRS agrees that the Vendor will not be liable for any damages caused by DRS' actions or failure of DRS to fulfill any of its responsibilities for site installation. In the event of DRS being unable to fulfill its responsibilities regarding site installation and as long as such inability of DRS is not caused by Vendor, Vendor is excused from performance.
- 29.5. The remedies listed above in Section 29 are the sole remedies of DRS for failure of the equipment to perform under the terms and conditions of this contract. **THE WARRANTIES IN THIS CONTRACT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.**

30. Equipment and Maintenance Documentation

- 30.1. Vendor agrees to provide maintenance documents and service manuals for Equipment purchased by DRS, at no additional cost, if this complies with Vendor's standard policies, or at Vendor's then current prices less applied discounts established under this Contract. Vendor also agrees to forward all updates and revisions to maintenance documents, drawings and service manuals to DRS for each item of Equipment ordered, at no additional cost, if this complies with Vendor's standard policies, or with DRS' permission, at Vendor's then current prices less applied discounts established under this Contract.
- 30.2. Vendor agrees that equipment and maintenance documentation, as with other materials provided under this contract, are subject to the public disclosure laws stated in the section titled Vendor's Proprietary Information.

31. Software Specifications

Software Specifications are listed and described in the RFP and the Vendor's proposal attached hereto as Exhibits A and B, and by this reference made a part hereof, as though completely set forth herein. Vendor warrants that products delivered hereunder shall perform in accordance with these specifications.

32. Software Upgrades and Enhancements

- 32.1. Vendor shall supply, at no added cost, updated versions of the Software including right of the decimal point upgrades from the software vendors to operate on upgraded versions of operating systems; updated versions of the Software which encompass improvements, extensions, or other changes which Vendor, at its discretion, deems to be logical improvements or extensions of the original products supplied to DRS; and interface modules which are developed by the Vendor for interfacing the Software to other Software products. *[Note: this section to be negotiated..]*

33. Installation (Site) Security

While on DRS' premises, Vendor, its agents, employees, or subcontractors shall conform in all respects with physical, fire, and other security regulations communicated to Vendor.

34. Use of Purchaser's Property and Facilities

- 34.1. Any property of DRS furnished to the Vendor shall be used only for the performance of this Contract. DRS must provide reasonable space and adequate utilities, including telephone services, to the Vendor for installation and maintenance of the equipment with reasonable access to the premises.
- 34.2. The Vendor shall be responsible for any loss or damage to property of DRS which results from willful misconduct or negligence on the part of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices to ensure that the property will be returned to DRS in like condition to that in which it was furnished to the Vendor. Upon the happening of loss, or destruction of, or damage to any DRS property, the Vendor shall notify DRS thereof and shall take all reasonable steps to protect that property from further damage.
- 34.3. The Vendor shall surrender to DRS all property belonging to DRS upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or subcontractors.
- 34.4. The Vendor shall ensure its employees, agents or subcontractors comply fully with all DRS regulations and policies establishing a weapon-, drug-, alcohol-, and smoke-free work place.

35. Vendor Commitments, Warranties, and Representations

- 35.1. Any written commitment by the Vendor within the scope of this Contract shall be binding upon the Vendor. Failure of the Vendor to fulfill such a commitment may constitute breach and shall render the Vendor liable for liquidated or other damages due DRS under the terms of this Contract.
- 35.2. For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:
 - 35.2.1. Prices, discounts, and options committed to remain in force over a specified period of time;
 - 35.2.2. Any warranty or representation made by the Vendor in a proposal as to Software performance or any other physical, design or functional characteristics of a machine, Software package, system, training, services, or other products within the scope of this Contract;
 - 35.2.3. Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;
 - 35.2.4. Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and
 - 35.2.5. Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

36. Year 2000 Compliance Warranty

Vendor warrants that the Software and Equipment provided pursuant to this Contract, or which is used during provision of Services fulfilling the terms of this Contract is Year 2000 compliant. This warranty includes a representation that dates on and after the year 2000 do not cause computational problems nor do these dates diminish the functionality of the Software and Equipment including, but not limited to, date data century recognition, calculations that accommodate same century and multi-century formulas and date values, year 2000 leap year calculations, and date data interface values that reflect the century. Failure to comply with Year 2000 requirements shall entitle DRS to a refund of the initial license fee as liquidated damages.

37. Protection of Purchaser's Confidential Information

- 37.1. Vendor acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the State's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Vendor agrees to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or subcontractors requiring such information for the performance of this contract, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to subcontractors who have signed a written Contract expressly prohibiting disclosure. Vendor further agrees to either destroy or return all such information at the end of the term of this Contract.
- 37.2. This section does not impose any obligation on the Vendor if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished to the Vendor; (3) furnished by DRS to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

38. Subpoena

In the event that a subpoena, governmental rules and requirements or other legal process commenced by a third party, in any way concerning the Equipment, Software or Related Services provided pursuant to this Contract is served upon Vendor or DRS, such party agrees to notify the other party within three (3) working days following receipt of such subpoena or other legal process. Vendor and DRS further agree to cooperate with one another in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

CONTRACT TERMINATION

39. Termination for Default

- 39.1. If either DRS or the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days from receipt of such notice subject to extension if reasonably necessary to cure providing the curing party is using due diligence or as otherwise mutually agreed. If the failure or violation is not corrected within the time provided, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party.
- 39.1.1. In the event of termination of this contract by DRS, DRS will retain any products delivered and accepted at the time of the termination, paying only for such products and/or services actually provided by Vendor up to time of termination of Contract.
- 39.1.2. In the event of termination by DRS, or in the event of termination by Vendor, the Vendor shall not be paid for products or services which were not delivered and accepted by DRS prior to the date of the Contract termination. In either event, nothing in this section shall be construed so as to prevent DRS from entering into negotiations with a third party to provide the same or similar services.
- 39.2. If it is determined the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.
- 39.3. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

40. Termination for Convenience

- 40.1. When it is in the best interest of DRS, DRS' Contracting Officer may terminate this Contract, in whole or in part, by providing twenty (20) calendar days written notice to the Vendor. Invocation of the Termination for Withdrawal of Authority, or Termination for Non-Allocation of Funds sections shall be deemed a Termination for Convenience but will not require such twenty (20) calendar days' notice.
- 40.2. If this Contract is so terminated, DRS is liable only for payments required by the terms of this Contract for Services received and accepted by DRS prior to the effective date of termination.

41. Termination for Withdrawal of Authority

In the event that the authority of DRS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, DRS may terminate this Contract under the Termination for Convenience section. This section shall not be construed so as to permit DRS to terminate this Contract in order to acquire similar Services from a third party.

42. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, DRS will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. DRS agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to DRS in the event this section shall be exercised. This section shall not be construed so as to permit DRS to terminate this Contract in order to acquire similar Services from a third party.

43. Termination for Conflict of Interest

- 43.1. DRS may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:
 - 43.1.1. Ethics in Public Service, chapter 42.52 RCW; or
 - 43.1.2. Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.
- 43.2. In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, DRS shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor. The existence of facts upon which DRS makes any determination under this clause shall be an issue and may be reviewed as provided in the section titled "Escalation and Disputes".

44. Termination Procedure

- 44.1. Upon termination of this Contract, DRS, in addition to any other rights provided in this Contract, may require the Vendor to deliver to DRS any property or Equipment specifically produced or acquired for the performance of such part of this Contract as has been terminated. The sections for the Treatment of Assets shall apply in such property transfer.
- 44.2. Unless otherwise provided herein, DRS shall pay to the Vendor the agreed-upon price, if separately stated, for the Services received and accepted by DRS: PROVIDED THAT, in no event shall DRS pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Escalation and Disputes section of this Contract. DRS may withhold from any amounts due the Vendor

for such completed work or Services such sum as the DRS Contract Administrator determines to be necessary to protect DRS from potential loss or liability.

44.3. After receipt of a notice of termination, and except as otherwise directed by DRS, the Vendor shall:

44.3.1. Stop work under this Contract on the date, and to the extent specified in the notice;

44.3.2. As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DRS to the extent required, which approval or ratification shall be final for the purpose of this section;

44.3.3. Complete performance of such part of this Contract as shall not have been terminated by DRS;

44.3.4. Take such action as may be necessary, or as DRS may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which DRS has or may acquire an interest;

44.3.5. Transfer title, excluding licensed Software, to DRS and deliver in the manner, at the times, and to the extent directed by DRS Contract Administrator, any property which is required to be furnished to DRS; and

44.3.6. Provide written certification to DRS that the Vendor has surrendered to DRS all said property.

44.4. The Vendor shall pay the damages due DRS as the result of termination within thirty (30) calendar days of notice.

ESCALATION, DISPUTES and REMEDIES

45. Escalation and Disputes

45.1. Parties agree that before issues are entered into a Dispute process as described below, resolution will first be sought through the Escalation process described herein. Escalation of issues may be initiated by either Vendor or DRS, and will be undertaken according to the following procedures:

45.1.1. Unresolved problems or issues will first be brought to the attention of DRS Contract Administrator and Vendor's Project Manager. The initiating party will log and track the progress of the problem or issue through resolution or into the Dispute process.

45.1.2. If the parties are unable to mutually agree on a resolution within four (4) hours, the problem will be escalated to the attention of the Vendor's next level of authority and DRS' Manager of Strategic Initiatives.

45.1.3. If the problem remains unresolved after an additional eight (8) hours after notification, the final step of escalation will be to Vendor's Corporate President and DRS' Director.

45.2. In the event a bona fide dispute concerning a question of fact arises between the Vendor and DRS and it could not be resolved through the Escalation process, and it cannot be resolved between the parties with the aid of the DRS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

45.3. Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party within three (3) business days of failing to resolve the dispute with the DRS Contract Administrator. The responding party shall respond in writing within three (3) business days of its receipt.

45.3.1. Then, both parties shall have three (3) business days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three (3) business days, a dispute resolution

panel may be requested in writing by either party who shall also identify the first panel member.

- 45.3.2. Within three (3) business days of receipt of the initiating party's request, the responding party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) business days. If the panel members cannot agree on the third member, DRS' Contract Administrator shall appoint the third member.
- 45.3.3. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- 45.3.4. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 45.4. Both parties agree to be bound by the determination of the dispute resolution panel.
- 45.5. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- 45.6. The parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.

46. Attorneys' Fees and Costs

- 46.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 46.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

47. Non-exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

48. Liquidated Damages

- 48.1. It is agreed by the Department of Retirement Systems and the Vendor that:
 - 48.1.1. If the Vendor does not provide or perform the requirements referred to or listed in this provision, damage to DRS will result.
 - 48.1.2. Quantifying such damages will be costly, difficult, and time consuming.
 - 48.1.3. The damage figures herein represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the contract. The damages provided in this section are just and reasonable.
 - 48.1.4. DRS may, at its discretion, withhold liquidated damages from payments to the Vendor.
 - 48.1.5. Nothing in this provision shall be construed as relieving the Vendor from performing all contract requirements whether or not said requirements are set forth herein. Moreover, DRS reserves the

right to enforce or to seek other remedies without limitation for failure to perform any contract duty.

48.2. Liquidated Damages Assessment: Collections, Withholds

Once DRS has determined that liquidated damages are to be assessed, the Director or designee shall notify the Vendor of the assessment(s). At the Director's or designee's discretion, the assessment notices may direct payment of the assessment by the Vendor. If payment is thus directed, the Vendor shall pay the assessment within thirty (30) days of receipt of the assessment notice. If the Director determines that any damage was caused in part by DRS, the Director shall reduce damage assessment against the Vendor proportionately.

48.3. Conditions for Termination of Liquidated Damages

As determined appropriate by the Director, the following are conditions under which the Vendor may obtain relief from the continued assessment of liquidated damages imposed:

Except as waived by the Director, no liquidated damages imposed on the Vendor shall be terminated or suspended until the Vendor issues a written notice of correction of condition(s) for which liquidated damages were imposed, and all the Vendor corrections have been subjected to verification at the discretion of the Director.

The necessary level of documentation to verify that a correction(s) is acceptable is to be determined by the Director, who is the sole judge of the accuracy of any documentation provided.

A Vendor notice of correction will not be accepted until the correction is verified and DRS' written approval of the test results or other verification.

Vendor use of resources to correct defects must not be allowed to cause other system problems.

48.4. Severability of Individual Liquidated Damages Clauses

If any portion of this liquidated damages provision is determined to be unenforceable in one or more of its applications, the portion remains in effect as to the remaining applications. If any portion of this liquidated damages provision is determined to be unenforceable in toto, the other portions of this provision shall remain in full force and effect.

48.5. Liquidated damages provided under the terms of this Contract are subject to the same limitation as provided in Section 59. Limitation of Liability.

48.6. Liquidated Damages – Specific Deliverables

48.6.1. Backfile Conversion System Installation Date: If the Vendor fails to deliver the deliverable listed in this section of the Contract by April 15, 2000, the Director may impose liquidated damages in the amount of up to two thousand dollars (\$2,000) per day until the condition is corrected.

49. Failure to Perform

If the Vendor or Customer fails to perform any substantial obligation under this Contract, the affected party shall give the other party written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice the non-performing party still has not performed, then DRS may withhold all moneys due and payable to Vendor or Vendor may discontinue service and support, without penalty to the other party DRS, until such Failure to Perform is cured or otherwise resolved.

50. Limitation of Liability

50.1. The parties agree that neither the Vendor nor DRS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim or demand based on patent or copyright infringement, in which case liability shall be as set forth elsewhere in this Contract.

This section does not modify any sections regarding liquidated damages, retainages or any other such conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled OSHA/WISHA, Termination for Default and Review of Vendor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

- 50.2. Neither the Vendor nor DRS shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor, vendor's subcontractors or DRS. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DRS acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, DRS, or their respective subcontractors.
- 50.3. If delays are caused by a subcontractor without its fault or negligence, neither the Vendor nor the DRS shall be liable for damages for delays, unless the Equipment, Software or Services to be furnished by their subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the Vendor or DRS to meet its required performance schedule.
- 50.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

CONTRACT ADMINISTRATION

51. Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

to **Vendor** at: *[Vendor Name]*
 Attention: [Name]
 [Street Address]
 [City]
 [State and Zip]
 [Phone and fax numbers]

to **Purchaser** at: State of Washington
 Department of Retirement Systems
 Attention: Maureen Westgard-Long, Deputy Director
 6835 Capitol Blvd. (M.S. 48380)
 Olympia, WA 98504-8380
 Voice (360) 664-7309
 Fax (360) 753-5397

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

52. Section Headings, Incorporated Documents and Order of Precedence

- 52.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 52.2. Except for the applicable federal and state statutes, laws and regulations, the documents listed below are, by this reference, incorporated into this Contract as though fully set forth herein. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
 - 52.2.1. Applicable federal and state statutes, laws, and regulations;
 - 52.2.2. Sections of this Contract 99-37;
 - 52.2.3. Schedule A - Authorized Product and Price List, to this Contract;
 - 52.2.4. Exhibit A - State of Washington Department of Retirement Systems Request For Proposal (RFP) for Backfile Conversion dated November 5, 1999;
 - 52.2.5. Exhibit B - Vendor's Response to the Purchaser, dated *[Date]*, including all written information provided with Vendor's response;
 - 52.2.6. The terms and conditions contained on DRS' purchase documents, if used; and
 - 52.2.7. All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to DRS and used to effect the sale of Equipment to DRS, or purports the Equipment is fit for a particular purpose or attests to the Equipment's engineering level, operating condition, functions, capabilities, or merchantability.

53. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Vendor Commitments, Warranties and Representations understandings, contracts, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

54. Additional Services and Equipment

DRS and Vendor agree that additional Services, Software and/or Equipment which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services, Software and/or Equipment, pricing and additional terms and conditions as relevant. The additional Services, Software and/or Equipment shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

55. Authority for Modifications and Amendments

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Vendor and by the Deputy Director of DRS (Contracting Officer) or delegate by writing. Only the Deputy Director of DRS or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of DRS.

56. Purchaser Contract Administrator

DRS shall appoint (*Name*) to be the DRS (Purchaser) Contract Administrator for this Contract and provide oversight of the activities conducted hereunder. The DRS Contract Administrator will manage this Contract on behalf of DRS and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract. DRS shall notify Vendor, in writing, when there is a new DRS Contract Administrator assigned to this Contract.

57. Vendor's Account Manager

The Vendor shall appoint [*Name*] who will be the Account Manager for DRS' account. The Vendor's Account Manager will be the principal point of contact for DRS concerning the Vendor's performance hereunder and for receipt of notices. The Vendor's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities.

58. Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

59. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

60. Subcontractors/Third Party Vendors

The Vendor may, with prior written permission from the DRS Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Vendor to DRS for any breach in the performance of the Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of the Vendor, and the Vendor further agrees to indemnify, save and hold DRS harmless from acts or omissions of the Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. DRS shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of the Patent And Copyright Indemnification sections of this Contract occasioned by the acts or omissions of the Vendor's Subcontractors, their agents or employees. The Patent and Copyright Indemnification sections of this Contract shall apply to all Subcontractors.

61. Assignment

- 61.1. With the prior written consent of DRS, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, that such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DRS that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.
- 61.2. With the prior written consent of the Vendor, which consent shall not be withheld unreasonably, DRS may assign this Contract to any public agency, commission, board, or the like, within the political

boundaries of the state of Washington: PROVIDED, that such assignment shall not operate to relieve DRS of any of its duties and obligations hereunder.

62. Publicity

The Vendor agrees to submit to DRS, all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein DRS' name is mentioned or language used from which the connection of DRS' name therewith may, in DRS' judgment, be inferred or implied. The Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of DRS.

63. Review of Vendor's Records

- 63.1. The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals (if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract).
- 63.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by DRS' Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston County. During the six (6) year period after the Contract term or one (1) year term following termination of litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.
- 63.3. The record retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.
- 63.4. It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from DRS' review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

GENERAL

64. Patent and Copyright Indemnification; Rights in Data

- 64.1. Vendor will, at its expense, defend or settle any claim against DRS that Equipment, Software, or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that DRS:
 - 64.1.1. Promptly notifies Vendor in writing of the claim; and
 - 64.1.2. Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 64.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by DRS, including costs paid to the Office of the Attorney General as legal fees. If such claim has occurred, or in Vendor's opinion is likely to occur, DRS agrees to permit Vendor at its option and expense, either to procure for DRS the right to continue using the Equipment or to replace or modify the

same so that they become noninfringing and functionally equivalent. If a court enjoins use of the Equipment and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Equipment and refund its depreciated value. No termination charges will be payable on such returned Equipment, and DRS will pay only those charges which were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Equipment has been installed less than one year, transportation to the initial installation site paid by DRS shall be refunded by Vendor.

64.3. Vendor has no liability for any claim of infringement arising from:

- 64.3.1. Vendor's compliance with any designs, specifications or instructions of DRS;
- 64.3.2. Modification of the Equipment or Software by DRS or a third party without the prior knowledge and approval of Vendor;
- 64.3.3. Use of the Equipment or Software in a way not specified by Vendor; or,
- 64.3.4. Use of the Equipment with Equipment or Software not supplied by Vendor unless the claim arose against Vendor's Equipment, Software or Services independently of any of these specified actions.

65. Save Harmless

Vendor shall protect, indemnify and save DRS, the State of Washington, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from such claim, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, agents, or subcontractors.

66. Insurance

- 66.1. Liability and Auto Insurance - Vendor shall, during the term of this Contract and at Vendor's own expense, maintain in full force and effect, the insurance described in this section with an insurance carrier or carriers licensed to conduct business in the state of Washington and approved by the DRS Contract Administrator, which approval shall not be unreasonably withheld. The minimum acceptable limits and types of coverage shall not be less than \$1 million commingled single limit per occurrence for each of the following categories:
- 66.1.1. Employers' liability covering the risks of bodily injury, property damage and personal injury (including death); with limits not less than \$1 million each accident for bodily injury by accident or \$1 million each employee for bodily injury by disease.
 - 66.1.2. Commercial General Liability (CGL); and, if necessary, commercial umbrella insurance, with a limit of not less than \$1 million per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.
 - 66.1.3. Business Automobile liability (owned or nonowned) covering the risks of public liability and property damage. Such insurance shall cover liability arising out of "any auto". Business auto coverage shall be written on ISO form CA 00 001, 1990 or later edition, or substitute liability form providing equivalent coverage.
 - 66.1.4. Errors or Omissions or Malpractice insurance, with a limit not less than \$10,000.

- 66.2. Premiums on all insurance policies shall be paid by Vendor or its Subcontractors. Such insurance policies provided for DRS pursuant to this section shall name DRS, the State of Washington, its elected and appointed officials, agents and employees as an additional insured. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state. All policies must have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to DRS by such insurer.
- 66.3. Vendor shall furnish to DRS copies of certificates of all required insurance within thirty (30) calendar days of the execution date of this Contract.
- 66.4. Insurance Policies must reference the DRS contract number and the agency name.
- 66.5. Insurance Carrier Rating. All insurance must be issued by companies admitted to do business with the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by DRS before the contract is accepted or work may begin.
- 66.6. Excess Coverage. By requiring insurance herein, DRS does not represent that coverage and limits will be adequate to protect the Contractor, and such coverage and limits shall not limit the Contractor's liability under the indemnities and reimbursements granted to DRS in this contract.

67. Industrial Insurance Coverage

Prior to performing work under this Contract the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. DRS will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

68. Licensing and Registration Standards

The Vendor shall comply with all applicable local, state, and federal licensing and registrations requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions, as well as requirements of the State Department of Revenue.)

69. OSHA/WISHA

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold DRS harmless from all damages assessed against DRS as a result of the failure of the items furnished under this Contract to so comply.

70. UCC Applicability

- 70.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 70.2. To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.
- 70.3. Notwithstanding the Section Headings, Incorporated Documents and Order of Precedence section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

71. Antitrust Violations

Vendor and DRS recognize that in actual economic practice overcharges resulting from antitrust violations are in fact usually borne by the Purchaser. Therefore, the Vendor hereby assigns to DRS any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to DRS resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this Contract.

72. Compliance with Civil Rights Laws

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under the Termination for Default sections, and the Vendor may be declared ineligible for further contracts with DRS. The Vendor shall be given a reasonable time in which to cure noncompliance. Disputes will be resolved in accordance with the section titled "Disputes". In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

73. Quiet Possession and Usage

Vendor warrants that DRS upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Equipment without suit, molestation, or interruption.

74. Severability

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

75. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties hereto.

76. Treatment of Assets

- 76.1. Title to all property furnished by DRS shall remain in DRS. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in DRS pursuant to the section titled Title and Ownership of Equipment, Software and Other Work Products. As used in this section Treatment of Assets, if the "property" is the Vendor's proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in DRS.
- 76.2. Any property of DRS furnished to the Vendor shall, unless otherwise provided herein or approved by DRS, be used only for the performance of this Contract.
- 76.3. The Vendor shall be responsible for any loss or damage to property of DRS which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.

- 76.4. Upon loss, or destruction of, or damage to any DRS property, the Vendor shall notify DRS thereof and shall take all reasonable steps to protect that property from further damage.
- 76.5. The Vendor shall surrender to DRS all property of DRS prior to settlement upon completion, termination, or cancellation of this Contract.
- 76.6. All reference to the Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

77. Vendor's Proprietary Information

Vendor acknowledges that DRS is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, DRS shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, DRS will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, DRS will release the requested information on the date specified.

CONTRACT EXECUTION

78. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

79. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

APPROVED

State of Washington

Department of Retirement Systems

APPROVED

[Vendors Name]

SIGNATURE

DATE

SIGNATURE

DATE

NAME

TITLE

NAME

TITLE

APPROVED AS TO FORM:

SIGNATURE

DATE

Assistant Attorney General

NAME

TITLE

Schedule A

Authorized Product and Price List

Schedule A
Authorized Product and Price List
as of *[Date]*
for
Contract No. 99 - 64
with
[Vendor]

Vendors are (Vendor is) authorized to sell **only the products identified in this Schedule A at the prices set forth in this Schedule A** under the above-referenced Contract.

This Schedule may only be modified in writing by DRS Contract Administrator.

Schedule B: Statement of Work and Deliverables

1. **PROJECT PURPOSE:** The purpose of the project is to Backfile Conversion Services for the Washington State Department of Retirement Systems.
2. **OBJECTIVES:** The objective of this contract is to enable the staff to improve quality and timeliness of customer services; provide for and improve disaster recovery for and safety of mission-critical documents through electronic storage; reduce reliance on paper flow for the large volume of business information; manage projected increases in customer volumes and services; facilitate providing new customer services (e.g., Web-enable imaging and document management; streamline DRS processes through imaging, document management, and workflow.
3. **PROJECT MANAGEMENT AND ORGANIZATION:** The Vendor will report to DRS' Contract Administrator. The Contract Administrator or his/her designee will review and approve all deliverables.
4. **DELIVERABLES:**
To be mutually developed with Vendor
5. **SCHEDULE:**
6. **COSTS:**
7. **BILLINGS:** Upon completion of work and acceptance of each deliverable by the Contract Administrator, the Vendor may invoice DRS for the associated amount specified in their Response (Exhibit B), or negotiated by Deliverable.